

**Holiday Inns, Inc., d/b/a Holiday Inn Crown Plaza
Redondo Beach and International Union of Op-
erating Engineers, Local 501, AFL-CIO. Cases
31-CA-20055 and 31-CA-20088**

February 28, 1994

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND TRUESDALE

On September 24, 1993, the General Counsel of the National Labor Relations Board issued an order consolidating cases and consolidated complaint alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 31-RC-7028. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On January 31, 1994, the Acting General Counsel filed a Motion for Summary Judgment. On February 3, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response. On February 18, 1994, the Union filed a joinder in support of the Acting General Counsel's Motion.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain and to furnish information that is relevant and necessary to the Union's role as bargaining representative, but attacks the validity of the certification on the basis of the Board's unit determination in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). There are no factual issues regarding the Union's request for information because the Respondent admitted that it refused to furnish the information. Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is now, and has been at all times material, a corporation duly organized under and existing by virtue of the laws of the State of Tennessee, with a place of business located in Redondo Beach, California, where it operates a hotel, restaurant, lounge and banquet or conference facilities.

The Respondent, during the 12-month period preceding issuance of the complaint, in the course and conduct of its business operations, purchased and received at its Redondo Beach facility, goods valued in excess of \$50,000 directly from enterprises located outside the State of California.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held July 9, 1993, the Union was certified on July 23, 1993, as the collective-bargaining representative of the employees in the following appropriate unit:

Included: All maintenance and operating engineer employees including utility/groundskeeper employees employed by the Employer at its facility located at 300 Harbor Drive, Redondo Beach California.

Excluded: All other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since August 3, 1993, the Union has requested the Respondent to bargain and to furnish information that is necessary and relevant to its role as collective-bargaining representative, and, since August 9, 1993, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after August 9, 1993, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Holiday Inns, Inc., d/b/a Holiday Inn Crown Plaza Redondo Beach, Redondo Beach, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Union of Operating Engineers, Local 501, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

Included: All maintenance and operating engineer employees including utility/groundskeeper employees employed by the Employer at its facility located at 300 Harbor Drive, Redondo Beach California.

Excluded: All other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) On request, furnish the Union information that is relevant and necessary to its role as the exclusive representative of the unit employees.

(c) Post at its facility in Redondo Beach, California, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. February 28, 1994

James M. Stephens, Chairman

Dennis M. Devaney, Member

John C. Truesdale, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with International Union of Operating Engineers, Local 501, AFL-CIO as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on

terms and conditions of employment for our employees in the bargaining unit:

Included: All maintenance and operating engineer employees including utility/groundskeeper employees employed by us at our facility located at 300 Harbor Drive, Redondo Beach California.

Excluded: All other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL, on request, furnish the Union information that is relevant and necessary to its role as the exclusive representative of the unit employees.

HOLIDAY INNS, INC., D/B/A HOLIDAY
INN CROWN PLAZA REDONDO BEACH